

## **USTR FACT SHEET**

**April 2, 2001**

### **BACKGROUND ON THE 2001 SECTION 1377 REVIEW**

Since the World Trade Organization (WTO) Basic Telecommunications Agreement came into force in February 1998, telecommunications markets overseas have rapidly opened to competition. U.S. companies have invested billions of dollars to build global networks, partner with foreign companies, and expand their commercial presence in foreign markets.

However, there remain obstacles to the full expansion of U.S. telecommunications companies into overseas markets. Of these, the most pervasive and difficult to overcome are barriers placed on new entrants by the dominant incumbent carrier. Most major U.S. trading partners have undertaken obligations in the WTO to ensure the pro-competitive entry of new service suppliers into the market, including obligations to maintain measures to prevent anti-competitive conduct, ensure cost-oriented interconnection, and administer scarce resources in an objective and non-discriminatory manner.

As discussed below, the allegations received this year in the 1377 review focus on practices of incumbent carriers that hinder the development of competitive telecommunications markets in various countries. The USTR expects that our trading partners share a common goal of establishing a truly competitive global market, one characterized by many players competing, not simply a few players maintaining their dominance in markets through practices at odds with their WTO commitments.

#### **Canada**

USTR welcomes the resolution of a complaint raised in last year's 1377 review concerning the consistency of Canada's contribution collection (universal service) regime with its WTO Reference Paper obligation to administer this program in a manner that is both competitively neutral and no more burdensome than necessary. The Canadian regulator (CRTC) reformed this system in November 2000. These reforms are expected to save competitive service providers millions of dollars.

#### **Colombia**

Colombia has undertaken WTO commitments to open its telecommunications market, including the market for international carrier services. Carrier services involve the provision of wholesale transmission capacity – via submarine cables or otherwise – to other telecommunications operators and Internet service providers. U.S. and other service suppliers seek to offer international carrier services in Colombia, consistent with these WTO commitments.

However, these operators – including those having wholesale transmission capacity on submarine cables that land in Colombia – are currently unable to obtain licenses in Colombia to offer carrier services. The inability of these operators to offer such services in Colombia both affects tens of millions of dollars of investment and deprives Colombian users of much-needed international bandwidth for

Internet services and other applications.

The United States expects that the Colombian government will work to resolve this issue expeditiously. The United States will review progress on this issue by June 25, and decide whether additional action, including steps in the WTO, would be appropriate.

## **EU Member States**

A pattern of anticompetitive behavior by dominant incumbent carriers in the EU has begun to hinder the development of a fully competitive telecommunications market in Europe, particularly for high-speed data services. This pattern, if left uncorrected, could result in serious setbacks for U.S. companies seeking to expand their service offerings in Europe. The most pervasive problem involves local loop unbundling (i.e. competitors' ability to lease subscriber lines) and actions by the dominant incumbent carrier to slow down, degrade, and, in some cases, deny access to the local loop by a new entrant.

The European Commission appears to share U.S. concern about these practices and has taken positive steps at the EU level to address them. For example, last year, the European Commission issued a regulation on unbundling, which, if properly implemented, should spur competition in European telecommunications markets. Notable shortcomings have been alleged, however, at the national level, particularly in Germany, France, Italy, Spain and the United Kingdom. Addressing these issues early will help ensure that the EU market grows to its full potential for new entrants, which will ultimately result in significant benefits for global companies and consumers alike. The United States plans to work closely with the EU to monitor how EU Member States are addressing these issues.

Particular problems identified in this year's review involve five EU Member States.

- < *Germany*: Germany is one of the most significant markets for international telecom carriers, given its size and growth potential. With that distinction comes a higher degree of interest by new entrants in their ability to compete against the dominant incumbent, carrier, Deutsche Telekom (DT) which is still 58 percent government-owned. Concerns raised in this year's review relate to (1) unbundled loop rates, (2) excessive co-location conditions and provisioning delays (i.e. relating to access to space in DT buildings), (3) absence of a reference interconnection offer, and (4) excessive licensing fees. Additional areas of concern involve alleged moves to lift price controls on DT in certain sub-markets, continued backlogs on interconnection requests, pricing of Internet services, and lack of transparency in judicial proceedings.

Germany has made progress in addressing many of these issues and there is reason to expect further progress on others, based on ongoing regulatory and administrative proceedings.

- On March 30, the German telecom regulator (RegTP) rejected DT's request for a 30 percent increase in unbundled loop rates, despite vigorous lobbying by DT, and cut the rates by five percent. Nevertheless, competitive carriers remain concerned about

potential price squeezes based on this cost structure and DT's retail pricing.

- Despite resistance from the Ministry of Finance, legislation is being prepared to reduce licensing fees, expected to be implemented by year's end.
- A task force is monitoring access to co-location space, and DT expects to clear up the backlog of requests by the fall.
- The German government has repeatedly pledged to fully privatize DT. There are positive indications that full privatization could take place within the next three to six years.

USTR welcomes the progress Germany has made over the past few years in developing a competitive telecommunications market. It would be unfortunate if that progress were defeated by further efforts by DT to stifle competitive entry. We urge Germany to remain vigilant in its efforts to prevent anticompetitive practices.

- < *France:* USTR received allegations that France Telecom (which remains 54 percent owned by the French government): (1) has failed to provide essential technical information for interconnection and non-discriminatory co-location; (2) discriminates against competitors in providing access necessary for the competitive provision of Digital Subscriber Line (DSL) services; and (3) receives preferential rights-of-ways over new entrants. These issues require continued monitoring to ensure that France Telecom does not use its market position to stifle competitive entry.

Continued French Government ownership of France Telecom affects the perception that the French regulator (ART) can act with full independence to address these issues. Although to date, the regulator has acted with a credible degree of independence, we encourage France to lay the groundwork for full privatization of France Telecom in the near future.

- < *Italy:* Concerns in Italy relate to the allegation that Telecom Italia (the former state-owned incumbent) has been able to obtain access to rights of way controlled by state-owned companies on more favorable terms and conditions than are offered to competitors. The European Commission appears to be investigating this issue, and USTR will continue to closely monitor this situation.
- < *Spain:* Complaints about the Spanish telecommunications market relate to the ability of the incumbent telecom carrier (Telefonica) to impede competition. The allegations are that Telefonica: (1) discriminates in provision of co-location; (2) uses non-transparent criteria in determining whether DSL-capable loops can be offered; (3) fails to provide essential information about its local loops; (4) fails to provision fully unbundled local loops on a timely basis; and (5) prices inputs in a potentially anti-competitive manner. The regulator (CMT) appears to be addressing these issues, e.g. by setting provisioning time lines, investigating allegations of price squeezes, and ensuring access to necessary network information. Nevertheless, these allegations highlight the need to continue to monitor developments in the Spanish market to support the efforts of new entrants to enter that market

and compete against Telefonica.

- < *United Kingdom:* Concerns in the United Kingdom related to: (1) the failure of the dominant incumbent (British Telecom, BT) to offer non-discriminatory access to facilities necessary for local loop unbundling; (2) the failure of BT to offer line sharing; and (3) the potential that BT prices essential inputs in a potentially anti-competitive manner. The United Kingdom appears to be making significant progress in addressing these problems.
- The British regulator (Oftel) has informed BT that it must provide non-discriminatory access to competitors to its central offices, absent justification for a refusal.
  - BT has issued a reference interconnection offer for line sharing. While these rates appear to be priced excessively (40% of retail rate of a standard subscriber line versus zero in many U.S. states), Oftel is investigating this price structure and may reduce it to more competitive levels.
  - Oftel is seeking input through a consultation document on additional issues associated with allocation of space in a central office—e.g. “co-mingling” competitors equipment with that of BT .
  - Oftel is investigating the costs which BT is proposing to charge for construction of collocation space in order to prevent BT from overcharging for unnecessary elements for the space.

USTR will follow these regulatory developments and continue to encourage rapid implementation of full local loop unbundling.

## **Japan**

The United States continues to place a high priority on promoting competition in Japan’s telecommunications market. Over-regulation of new entrants and toleration of anticompetitive behavior by the 46% government-owned NTT group of companies have restricted opportunities for new entrants. These and other persistent barriers underscore the need for far-reaching reform of Japan’s regulatory regime. Principal concerns relate to: (1) the lack of effective dominant carrier regulation, including retail price regulation; (2) the lack of a fully independent regulator with effective enforcement powers; (3) burdensome licensing and filing requirements; (4) above-cost interconnection rates in both the wired and wireless markets; and (5) the lack of an effective rights-of-way regime. USTR will continue to vigorously pursue these issues under the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy. In addition, we will actively monitor developments related to these issues to ensure that Japan complies with its WTO obligations to facilitate the pro-competitive entry of new service suppliers into the market, maintain measures to prevent NTT from engaging in anti-competitive conduct, and ensure cost-oriented interconnection rates.

Japan is currently considering legislative and regulatory changes to address most of the major problems that have been identified. However, recent press reports suggest that measures originally drafted to provide effective dominant carrier regulation and a more competitive market have been weakened due

to political pressure by NTT. The U.S. Government will closely monitor the legislation and implementing regulations to ensure that U.S. concerns are addressed. Although reforms for other issues such as above-cost interconnection rates will take longer to resolve, the time period for implementation of such reforms should not be overly delayed in such a dynamic sector. With regard to interconnection rates, USTR will closely monitor the implementation of the July 2000 Agreement to reduce NTT's interconnection rates, including the work of the Japanese Government Committee established to reform NTT's cost-recovery mechanisms. In particular, we will also closely review the Committee's recommendations due next year to ensure that its interconnection rate structure does not facilitate NTT's monopolization of next-generation data services (i.e. through the inappropriate charging of competitors for network components whose costs do not vary with usage).

## **Mexico**

Ongoing concerns with barriers to competition in Mexico's \$12 billion telecommunications market led the United States to initiate WTO dispute settlement with Mexico in August 2000. Mexico has made some progress to date in addressing these barriers (notably in the reduction of domestic interconnection rates and the issuance of "dominant carrier" rules to regulate Telmex). However serious concerns remain.

For instance, Mexico has failed to address the much-needed reform to its international rules to permit competition in the offering of international services at cost-oriented rates. Mexico's rules prevent competitive alternatives to the settlement of all calls between the United States and Mexico at 19 cents per minute – a rate that exceeds cost by approximately 15 cents. Mexico has a WTO obligation to ensure that international interconnection rates are cost-oriented. The maintenance of such an inflated rate appears to run counter to this obligation.

In addition, Mexico has not yet taken concrete enforcement action against Telmex in the face of clear violations of its "dominant carrier" rules. Such violations – which relate to Mexico's WTO obligations – include Telmex's refusal to provide key information required by the regulation (such as information regarding its network needed by competitors to offer service), Telmex's failure to offer competitors non-discriminatory quality of service, and Telmex's failure to provision private lines in a timely manner.

Continued failure to address these issues raises serious concerns about the willingness on the part of the Mexican Government to comply with its WTO telecommunications trade obligations. Absent progress on these issues by June 1, the United States will determine the next steps to take, including moving the pending WTO case forward.

## **Peru**

USTR welcomes the reduction in interconnection rates in Peru, which has been subject to Section 1377 review since 2000. In December 2000, the Peruvian regulator (OSIPTEL) reduced all fixed-line interconnection rates to 1.68 cents per minute, down from 2.9 cents per minute. Rates are expected to continue to decline to .96 cents per minute by July 2002, which should put Peru's interconnection rates at among the lowest in Latin America. In addition, OSIPTEL is reportedly developing a methodology for analyzing the cost of terminating calls onto mobile networks. This should provide valuable information on whether mobile operators are abusing their monopoly on terminating calls to their

customers, particularly calls from long-distance carriers.

## **South Africa**

Telkom, South Africa's state-owned monopoly supplier of basic telecommunications services, continues to deny certain U.S. service suppliers the network capacity they need to supply value added network services (VANS). Although value-added services do not fall within the scope of Telkom's monopoly, Telkom has claimed that VANS providers and Internet Service Providers (ISPs) are providing basic services that infringe on this monopoly, justifying its denial of network capacity.

However, determining the scope of VAN services and of Telkom's monopoly should fall within the purview of South Africa's regulator (ICASA), not Telkom itself. In this regard, USTR welcomes ICASA's ongoing rule-making process to clarify these issues and expects that this review will be completed expeditiously and consistent with South Africa's WTO obligations. On March 20, South Africa's Minister of Communications also took a major step forward, declaring that VANS should have the right to offer a broader range of data services (i.e., Virtual Private Networks for non-voice services). USTR welcomes this statement and will closely monitor the outcome of the regulatory and policy review to ensure that U.S. service suppliers are able to offer VANS consistent with South Africa's WTO commitments.

In the interim, Telkom should not be allowed to act unilaterally to deny access to its network, and USTR urges South Africa to reinstate and enforce a recent ruling prohibiting Telkom from denying access to VANS without explicit authorization of the regulator.

## **Taiwan**

Taiwan's telecommunications regulations impose serious limitations on the competitive offering of telecommunications services and undermine the ability of new entrants to compete in Taiwan's market. Specifically, these regulations impose: (1) certain capitalization requirements for fixed line licensees, as well as build-out requirements for these licensees; (2) limitations on building "backhaul" links to urban centers from submarine cable landing stations; (3) restrictions on selling capacity directly to end-users; and, (4) prohibitions on building more than one international gateway. These restrictions raise serious concerns regarding Taiwan's intention to comply with the commitments undertaken by Taiwan, as part of its bilateral WTO accession negotiations with the United States, to liberalize its telecommunications market by July 2001.

USTR notes and welcomes the ongoing regulatory review of Taiwan's telecom regulations and expects this review to result in the promised liberalization of its market. Should Taiwan fail to address these barriers, the United States will consider appropriate action, including under Section 1374 of the 1988 Trade Act. This provision allows USTR to identify at any time those trading partners which fail to provide mutually advantageous market opportunities in the telecommunications sector.